



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
www.blm.gov/ca/barstow



Level 3 Fiber Optic Expansion Project (CAD08000-2013-0009) Finding of No Significant Impact August 2013

It is my determination that a decision to approve this project would not result in significant impacts to the quality of the human environment. Anticipated direct, indirect, and cumulative impacts are within the range of impacts addressed by the California Desert Conservation Area Plan and no non-mitigable impacts were identified. Thus, the project does not constitute a major federal action having a significant effect on the human environment; therefore, an environmental impact statement (EIS) is not necessary and will not be prepared. This conclusion is based on my consideration of CEQ's criteria for significance (40 CFR § 1508.27), regarding the context and intensity of the impacts described in the EA (DOI-BLM-CAD08000-2013-0009-EA) and based on my review of the project and its impacts.

Context: The entire project area falls within an area of relatively low development. However, the area is not pristine, given its location near and within a utility corridor. The area is not within critical habitat for federally listed species. Both these species are covered under special management actions on public lands, as approved in the West Mojave Plan (2006).

The discussion of significance criteria that follows applies to the intended action and is within the context of local importance, due to the relatively limited scope of effects. DOI-BLM-CAD08000-2013-0009-EA details the effects of the project and is incorporated by reference into this FONSI. None of the effects identified including direct, indirect and cumulative effects, are considered significant based on the lack of conflict with existing uses, relatively low special-status species densities, minimal impacts to special-status species and their habitat or to current air quality, when considered along with the mitigation of identified impacts as set forth in the attached EA, and included as stipulations to this decision. The EA has also determined that the proposed action conforms with other aspects of the California Desert Conservation Area Plan, as amended.

Intensity: The following discussion is organized around the Ten Significance Criteria described in 40 CFR 1508.27 and incorporated into BLM's NEPA Handbook (H-1790-1, 2007), and supplemental Instruction Memoranda, Acts, regulations and Executive Orders. The following have been considered in evaluating intensity for this proposal:

1. **Impacts may be both beneficial and adverse.** The proposed action would adversely impact resources as described in the EA. Potential impacts include vegetation removal, soil disturbance, temporary noise and dust due to road construction, and habitat fragmentation. Mitigating measures to reduce adverse impacts to desert tortoises and air

quality were identified in the EA, and are incorporated in the decision. Mitigation measures include restriction from desert tortoise handling. Based on the EA analysis, adopted design measures, and additional mitigation measures that are identified in the biological analysis, none of the environmental effects discussed in detail in the EA and associated appendices are considered significant.

2. **The degree to which the selected alternative will affect public health or safety.** No aspects of the project have been identified as having the potential to significantly and adversely impact public health or safety. As stated above, design and maintenance measures for the fiber optic line have been incorporated to mitigate potential impacts resultant during construction or use. The project location is over 9 miles from the nearest residence and from the nearest community.
3. **Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.** The project has not been identified as having unique characteristics.
4. **The degree to which the effects on the quality of the human environment are likely to be highly controversial.** No anticipated effects have been identified that are scientifically controversial. As a factor for determining within the meaning of 40 C.F.R. § 1508.27(b)(4) whether or not to prepare a detailed environmental impact statement, “controversy” is not equated with “the existence of opposition to a use.” *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). “The term ‘highly controversial’ refers to instances in which ‘a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use.’” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).
5. **The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.** The project is not unique or unusual; it is the expansion of an existing fiber optic line across federal lands. The environmental effects to the human environment are fully disclosed and analyzed in the EA. There are no predicted effects on the human environment that are considered to be highly uncertain or that involve unique or unknown risks.
6. **The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.** The proposed action does not set a precedent for any future actions that may have significant effects, nor does it represent a decision in principle about a future consideration.
7. **Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership.** The proposed action is not connected to any other federal actions. No significant direct, indirect, or cumulative impacts have been identified.

8. **The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.** Protocol archaeological surveys have been conducted and a cultural report prepared and accepted by the BLM for this project. The project will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historical resources.
9. **The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973, or the degree to which the action may adversely affect: 1) a proposed to be listed endangered or threatened species or its habitat, or 2) a species on BLM's sensitive species list.** This action would not adversely affect habitat for listed, proposed, or BLM-sensitive species, based on the EA analysis. Measures have been identified on a project-specific basis to further reduce impacts or likelihood of take. These are incorporated as stipulations to the decision. With these measures, the proposed action is determined as no affect on desert tortoise, because of the small amount of habitat affected, mitigation requirements, and the many measures, including project design, taken to reduce or eliminate take of the species.
10. **Whether the action threatens a violation of a federal, state, local, or tribal law, regulation or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.** The project does not violate any known federal, state, local or tribal law or requirement imposed for the protection of the environment. The EA and supporting project record contain discussions pertaining to Endangered Species Act, National Historic Preservation Act, Clean Water Act, and Executive Order 12898 (Environmental Justice), and Clean Air Act. The EA concluded that there would be no significant or substantial effect associated with these regulations. In addition, the project is consistent with applicable land management plans, policies, and programs.



Katrina Symons
Manager, Barstow Field Office

9/3/12
Date

EXHIBIT B
Stipulations, August 2013

Right-of-Way Grant Amendment, CACA-41418
Level 3 Communications, LLC

A. General

1. The BLM Authorized Officer for the administration of this lease is the Field Manager, Barstow Field Office, 2601 Barstow Road, Barstow, CA, Phone (760) 252-6000.
2. The holder shall designate a field contact representative (FCR), who shall be familiar with and responsible for overseeing compliance with the Decision Record and Conditions of Approval and for coordination on compliance with the Bureau. An FCR must be on site during all project activities and shall have the authority to halt all project activities that are in violation of the stipulations. The FCR shall have a copy of all approval documents when work is being conducted on the site. The FCR may be a crew chief or field supervisor, a project manager, a consultant, or any other employee of the holder.
3. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the ROW, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the ROW, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW holder.
4. The holder shall conduct all activities associated with the operation, and termination of the right-of-way within the authorized limits of the right-of-way.
5. Holder shall not initiate any construction on the project or use of the (Federal land or public land) without the prior written authorization of the Authorized Officer. Such authorization shall be given solely by means of a written Notice to Proceed issued by the Authorized Officer. Any Notice to Proceed shall authorize construction or use only as therein expressly stated and only for the particular construction spread or use therein described
6. The holder shall maintain the lease in a safe, usable condition, as directed by the authorized officer.

7. The holder shall comply with all conditions contained in this lease unless otherwise approved in writing by the Authorized Officers. Non-compliance with these conditions by holder or any of his agents may result in the cancellation or suspension of the lease or adverse action against the holder.
8. Maintenance and emergency-related traffic shall be restricted to routes approved by the Authorized Officer. New access roads or cross-country vehicle travel shall not be permitted unless prior written approval is given by the Authorized Officer.
9. No advertising signs or devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the Authorized Officer.

B. Protection of Improvements

1. The Holder shall accomplish the crossing of the pipeline owned by Kern River Gas Transmission Company in accordance with the agreement between that company and the Holder, filed with the BLM.
2. Holder shall post intervisible signs indicating location of underground cable, pipeline and providing name, address and telephone number of a responsible contact person.
3. **Protection of Survey Corner and Boundary Line Markers:** Evidence of the Public Land Survey System (PLSS) and related Federal property boundaries will be identified and protected prior to commencement of any ground-disturbing activity. This will be accomplished by contacting Bureau Land Management (BLM) Cadastral Survey to coordinate data research, evidence examination and evaluation, and locating, referencing or protecting monuments of the PLSS and related land boundary markers from destruction. In the event of obliteration or disturbance of the Federal boundary evidence the responsible party shall immediately report the incident, in writing, to the Authorizing Official. BLM Cadastral Survey will determine how the marker is to be restored. In rehabilitating or replacing the evidence the responsible party will be instructed to use the services of a Certified Federal Surveyor (CFedS), procurement shall be per qualification based selection 4, or reimburse the BLM for costs. All surveying activities will conform to the Manual of Surveying Instructions (Manual) and appropriate State laws and regulations. Local surveys will be reviewed by Cadastral Survey before being finalized or filed in the appropriate State or county office. The responsible party shall pay for all survey, investigation, penalties, and administrative costs.

C. Cultural and Paleontological

1. **Inadvertent Discovery of Human Remains**
Upon discovery of human remains in California, all work in the area must cease immediately, nothing disturbed and the area is to be secured. The County Coroner's Office of the county where the remains were located must be called. The Coroner has two working days to examine the remains after notification. The appropriate land manager/owner or the site shall also be called and informed of the discovery. If the remains are located on federal lands, federal land managers/federal law enforcement/federal archaeologist are to be informed as well because of complementary

jurisdiction issues. It is very important that the suspected remains and the area around them remain undisturbed and the proper authorities called to the scene as soon as possible as it could be a crime scene. The Coroner will determine if the bones are historic/archaeological or a modern legal case.

Modern Remains

If the Coroner's Office determines the remains are of modern origin, the appropriate law enforcement officials will be called by the Coroner and conduct the required procedures. Work will not resume until law enforcement has released the area.

Archaeological Remains

If the remains are determined to be archaeological in origin and there is no legal question, the protocol changes depending on whether the discovery site is located on federally or non-federally owned/managed lands.

Remains discovered on federally owned/managed lands

After the Coroner has determined the remains are archaeological or historic and there is no legal question, the appropriate Field Office Archaeologist must be called. The archaeologist will initiate the proper procedures under ARPA and/or NAGPRA. If the remains can be determined to be Native American, the steps as outlined in NAGPRA, 43 CFR 10.6 *Inadvertent discoveries*, must be followed.

2. The proponent(s) will immediately bring to the attention of the Barstow Field Manager (or his designated representative) any cultural resources (prehistoric/historic sites or objects) and/or paleontological resources (fossils) encountered during permitted operations and maintain the integrity of such resources pending subsequent investigation.
3. Any cultural and/or paleontological resource (historic/prehistoric site or object) discovered by the holder, or any person working on their behalf, on public or Federal land shall immediately be reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder. In the case of inadvertent finds of Native American human remains, the most likely effected tribe or tribes will be notified in addition to the notification of the Native American Heritage Commission and the coroner as provided by law.
4. If a potential fossil (or fossils) is discovered by construction crews, all earthwork or other types of ground disturbance within 25 feet of the find shall stop immediately until a qualified professional paleontologist (as defined by the Society of Vertebrate Paleontology) can assess the nature and importance of the find. Based on the scientific value or uniqueness of the find and his/her professional judgment, the qualified professional may record the find and allow work to continue, or recommend salvage and recovery of the fossil. The qualified professional may also propose modifications to the stop-work radius based on the nature of the find, site geology, and the activities occurring on the site. If treatment and salvage is required, recommendations shall be consistent with BLM guidelines and currently accepted scientific practice, and shall be subject to review

and approval by the BLM, Ft. Irwin, or designee. If required, treatment for fossil remains may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The applicant shall be responsible for ensuring that treatment is implemented and report to the BLM for activities on BLM-administered land and to Fort Irwin for activities on DOD land. If no report is required, the applicant, in coordination with BLM and Fort Irwin shall nonetheless ensure that information on the nature, location, and depth of all finds is readily available to the scientific community through university curation or other appropriate means.

D. Water Resources

1. Implement conditions of Dredge and Fill permit from RWQCB and Lake and Streambed Alteration Agreement from CDFW, if applicable.
2. Implement erosion control measures, including dust control, during all construction activities that newly expose soils; exposed soils or stockpiles shall be covered overnight with a bonded fiber matrix material if left exposed at the end of each working day;
3. When spraying water on exposed soils for the purposes of dust control, only the minimum amount of water necessary to wet the soils shall be used; water shall not be applied in a manner that results in runoff, ponding or pooling in any areas outside of the temporary construction ROW;
4. If dewatering of excavations and/or other waste discharges to land are required over the course of construction and excavation activities, the applicant and/or its contractor shall contact the LRWQCB and determine the need to file a Report of Waste Discharge. The applicant and/or its contractor shall obtain coverage under SWRCB Order 2003- 0003-DWQ, or other permit as determined appropriate by the Lahontan RWQCB, permitting the discharge and ensuring compliance with all applicable Basin Plan provisions and water quality objectives;
5. Vehicle parking areas, equipment staging areas and active construction areas shall be kept free of trash, installation debris, construction spoils, remaining installation materials, and miscellaneous litter; all such materials and wastes (except for excavated soils) shall be collected and disposed of daily at a permitted disposal facility;
6. Construction vehicles (including the drill rig proposed under Alternative 1) shall be checked for fuel or fluid leaks prior to entering the construction site and shall immediately be serviced if any leaks are found; in addition, drip pans shall be placed beneath unattended vehicles at all times to contain potential contaminant releases;
7. Portable restrooms, if used, shall be regularly inspected and serviced by a licensed portable sanitary service;
8. Construction activities shall be conducted consistent with hazardous waste and pollution regulations;

9. Any vegetation clearing necessary to install proposed facilities within the 25-foot temporary ROW shall be performed as close to the time of construction as practicable and re-establishment of surface contours shall occur as close to the completion of construction as is practicable;
10. Vegetation clearing shall be limited to areas to be excavated (e.g., manholes, HDD pits, and/or trenches) and established parking/staging areas and shall include collection of plant matter, mulch and the top six inches of soil; all other areas within the temporary construction ROW shall be mowed, trimmed or bent only to the extent necessary to all passage of pickup trucks and/or other construction-related vehicles and equipment;
11. Construction equipment and associated activities shall be confined to the approved construction corridor;
12. Complete post-construction monitoring and supplemental revegetation where needed.

E. Biological Resources

Desert Tortoise

1. Within 2 weeks of the onset of construction, 100 percent coverage ground surveys of the project site shall be conducted for tortoises, signs of use, or burrows. If no tortoises or active burrows are identified, then construction may proceed without interruption. Open trenches or pits shall be covered at the end of each work day to prevent desert tortoise and other reptiles and small mammals from becoming trapped. During land clearing and construction, a biological monitor shall observe construction activities and verify that no tortoises wander into the construction site. If a tortoise is present, construction in the immediate vicinity shall be halted until the tortoise moves out of the work area under its own volition.
2. Before construction begins, personnel working on the site shall receive a briefing on the desert tortoise, detailing the life history of a tortoise and the protocol to follow if a tortoise is encountered at the work site.
3. Tortoise handling is prohibited.
4. Workers shall be required to check underneath each on-site, parked vehicle prior to moving it. If a desert tortoise is located, the vehicle shall not be moved until the tortoise is relocated from the area.

Other Special-status Species

Burrowing owl and loggerhead shrike have the potential to breed on the Proposed Action site. To avoid potential effects on nesting birds, including birds protected under the MBTA, the following measures shall be implemented as a part of the Proposed Action:

5. Land and vegetation clearing shall occur outside the breeding season for birds listed under the MBTA, defined as February 15 to August 31, where practicable. . If vegetation clearing is required during the breeding season, then preconstruction surveys of breeding

birds shall be conducted. Identified active nests shall be protected from disturbance by a nesting buffer, which shall remain in place until the young have fledged from the nest and no new nests are initiated for the season. Buffer size shall be determined by a qualified biologist and shall be based on nesting species.

Desert kit fox occur in proximity to the project site. To avoid potential effects on desert kit fox, the following measures shall be implemented as a part of the project:

6. A preconstruction survey shall be conducted for desert kit fox within the project area and a 200 foot buffer. Any occupied burrow complexes shall be flagged and an avoidance buffer established. If an occupied burrow cannot be avoided, coordination shall be undertaken with CDFW to develop and implement a relocation plan. . Kit foxes shall not be harassed during construction activities. Prior to construction, construction personnel shall be briefed on desert kit fox, their life history, and their protective status.
7. Pet dogs shall be kept from the project site as there have been recent outbreaks of canine distemper in regional kit fox populations.

F. Pest Species

1. During construction, all trash and debris shall be placed in receptacles for delivery to approved landfill facilities.
2. Daily cleanup of trash and debris shall be required, including emptying and disposing of trash in receptacles.

G. Pesticides

Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.

H. Hazardous and Toxic Substances

1. All hazardous substances and/or materials produced or identified during the construction, operation, and maintenance of the Proposed Action shall be handled/disposed of in accordance with existing laws and policy, with the site-specific Safety and Health Plan, and hazardous materials BMPs discussed in Section 4.4.5.
2. Holder shall comply with all applicable federal and state hazardous materials and hazardous waste laws and their implementing regulations. These laws include, but are not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; the Clean Water Act; and state of California regulations found in the California Code of Regulations, Title 22.



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Level 3 Fiber Optic Expansion Project (CAD08000-2013-0009) (EA) Decision Record August 2013

1.0 Introduction and Background

The U.S. Army and Bureau of Land Management (BLM) have conducted an environmental assessment (EA) for a proposed action to amend a right-of-way grant for expansion of an existing fiber optic line Northwest of Baker in San Bernardino. A copy of this EA and associated supporting documentation were made available for review and comment for 30 days, from June 17, 2013 to July 16, 2013. Copies of the EA were available at the Barstow Library at 304 East Buena Vista Street, Barstow, California 92311, the Fort Irwin Post Library at 331 2nd Street, Fort Irwin, California 92310, and online at:

<http://www.irwin.army.mil/Community/Environmerit/Pages/NEPA.aspx>.

Throughout this process, the public was able to obtain information on the status of the Preferred Alternative and EA through the Fort Irwin Directorate of Public Works (DPW), Environmental Management Division. The review and comment period ended July 16 2013. Based on information in the EA and recommendations from BLM specialists, the following constitutes my decision.

2.0 Decision

It is my decision to authorize an amendment to Level 3 Communications, LLC, FLPMA right-of-way grant for a fiber optic line. This decision is contingent on Level 3 Communications, LLC applicable environmental commitments as outlined in the Stipulation.

2.1 Authority: FLPMA

2.2 Terms, Compliance and Monitoring:

Potential resource conflicts were resolved through environmental commitments as described in the EA

2.3 Alternatives Considered

A no action alternative and two action alternatives were analyzed in the EA. The proposed action would allow the applicant, Level 3 Communications, LLC, to install the additional cable and vaults through ditching. Alternative 1 would use horizontal directional drilling to install the additional cable.

2.4 Alternatives Considered but not Selected

No other alternatives were considered for this project.

2.2 Decision and Rationale

One public comment was received for this project. Based on information in the EA, the project record, and consultation with my staff, I have decided to implement the project alternative 1 as described in the EA. Additionally, for protection of improvements, BLM will require Level 3 Communications, LLC to accomplish the crossing of the pipeline owned by Kern River Gas Transmission Company in accordance with an agreement between Kern River Gas and Level 3 Communications, LLC. The project is not expected to adversely impact any resources.

3.0 Consultation and Coordination

Conditions to be imposed on the approved action include mitigation measures identified in the EA. All conditions and mitigation measures are attached as stipulations to this decision.

4.0 Public Involvement

The EA was posted on line, for public review for a 30-day comment period, from June 17, 2013 to July 16, 2013. Received comments have been addressed in the EA. None of the comments received resulted in changes to the analysis provided in the EA.

5.0 Plan Consistency

Based on review of the attached Environmental Assessment (CAD08000-2013-0009) (EA) and my Finding of No Significant Impact (FONSI) described herein, it is my decision to approve the right-of-way amendment for expansion of the fiber optic line.

This action is provided for by the Federal Lands Policy and Management Act, which provides for access across public lands to private property, consistent with other relevant laws, policies and plans.

The California Desert Conservation Area (CDCA) Plan, 1980, as amended, including by the West Mojave Bioregional Plan (West Mojave Plan, 2006), is the overriding Bureau of Land Management (BLM) land use plan for the affected area. The CDCA Plan has identified public lands in this area as Multiple-Use Class Limited, which provides for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive resources are not significantly diminished.

Several conditions have been imposed to assure that sensitive resources are not diminished during upgrade and future use of this project.

The proposed action, as conditioned herein, conforms to all requirements in these plans.

6.0 Administrative Remedies

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of Interior, Board of Land Appeals (Board) in strict compliance with the regulations in 43 CFR Part 4. Notices of appeal must be filed in this office within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments, or briefs must also be served upon the Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712, Sacramento, CA 95825.

The effective date of this decision and the date initiating the appeal period will be the date of this notice of decision.



Katrina Symons

Manager, Barstow Field Office

9/3/13
Date